- THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

+ W.A.No. 154 OF 2003

AND

C.C.NO. 1284 OF 2003

% Dated 29.10.2004

 # A.P. State Electricity Board and others

…. Appellants

Vs.

$ P.V. Satyanarayana murthy and others

….Respondents

! Counsel for appellants: Mr. S. Ravindranath,

^Counsel for Respondents: Mr. G. Vidyasagar,

<GIST:

> HEAD NOTE:

? Cases referred

1. (2004) 2 Supreme Court Cases 681

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

W.A.No. 154 of 2003

AND

C.C.NO. 1284 OF 2003

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WRIT APPEAL NO : 154 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28.8.2002 in WP NO : 16228 OF 1993 on the file of the High Court.)

Between:

1. The A.P. State Electricity Board rep. By its Secretary, Vidyutsoudha, Khairatabad, Hyderabad.
2. The Director, Personnel A.P. State Electricity Board, Vidyuthsoudha, Khairatabad, Hyderabad.
3. The Chief Engineer, Operation Zone, A.P. State Electricity Board, Warangal.
4. The Superintending Engineer, A.P. State Electricity Board, Warangal

..... APPELLANTS

AND

1. P.V. Satyanarayana murthy s/o Narasimha Murthy, aged 36 years, H.No. 64/1, LIGH, A.P. Housing Board, Subedari, Hanumakonda – 506 010.
2. S. Sattaiah s/o Lakshmaiah, aged about 27 years, Thornala post, Dulimitta, Muddur Mandal, Warangal.
3. M. Praveen s/o Sarvaiah, aged 27 years, c/o Talla Yakub, Ambedkarnagar, Torrur, Warangal District.

.....RESPONDENTS

Counsel for the Appellants: MR.S.RAVINDRANATH

Counsel for the Respondents.: MR.G.VIDYASAGAR

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C.C.No. 1284 of 2003

(Contempt case under Sections 11 and 12 of the Contempt of Courts Act, 1971 to punish the respondents herein for violating, disobeying the order of the High Court dt. 28.8.2002 in W.P.No. 16228 of 1993)

Between:

1. P.V. Satyanarayana murthy s/o Narasimha Murthy, aged 36 years, H.No. 64/1, LIGH, A.P. Housing Board, Subedari, Hanumakonda – 506 010.
2. S. Sattaiah s/o Lakshmaiah, aged about 27 years, Thornala post, Dulimitta, Muddur Mandal, Warangal.
3. M. Praveen s/o Sarvaiah, aged 27 years, c/o Talla Yakub, Ambedkarnagar, Torrur, Warangal District.

…Petitioners

and

1. Mr. Rachel Chatterjee, Chairman & Managing Director, APTRANSCO (The then A.P. State Electricity Board), Vidyutsoudha, Khairatabad, Hyderabad.
2. Sri K. Gopalakrishna, General Manager (P), APTRANSCO, Vidyuthsoudha, Khairatabad, Hyderabad.
3. Sri P. Gopal Reddy, CMD, A.P. Northern Power Distribution Co., Ltd., OPP: NIT (Res), Petrol Pump, Warangal.
4. Sri S. Veeraswamy, Superintending Engineer (operations), A.P. Northern Power Distribution Co., Ltd., Warangal

..... Respondents

Counsel for the petitioners: MR.G. Vidyasagar

Counsel for the Respondents.: MR.S. Ravindranath,

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE P.S.NARAYANA

W.A.No. 154 of 2003

AND

C.C.NO. 1284 OF 2003

COMMON JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

W.A.No. 154 of 2003

Writ appeal has been filed against the judgment of a learned single Judge of this Court in W.P.No. 16228 of 1993 whereby he had allowed the writ petition and set aside the impugned proceedings to the extent of construing that the in-service candidates were eligible and were entitled for a preference. The learned single Judge also directed the appellants to consider the case of the petitioners and issue necessary orders for appointment. The parties shall be referred to as they appeared in the writ petition.

Briefly stated, the case of the writ petitioners before the writ Court was that there were certain posts of Sub-Overseers available with the appellants and accordingly the petitioners who were eligible were sponsored along with other candidates by the Employment Exchange. In all 130 candidates were sponsored by the Employment Exchange. A written test was conducted on 10.5.1993 and 130 candidates including the petitioners appeared in the test. 12 candidates including the petitioners were called for interviews. Interviews were held on 20.7.1993. All the 12 candidates who were

qualified in the interviews were selected and put on the select panel. By the end of July, 1993, 7 of the selected candidates were appointed as Sub-Overseers. After four months again two persons from the panel were appointed as Sub-Overseers. It is submitted that there were 11 posts of Sub-Overseers in Warangal Circle alone. After the selection of the writ petitioners and after 9 persons were appointed from the panel, the petitioners were also waiting for the appointments. When the 4th respondent in the writ petition requested the 3rd respondent to permit him to appoint the petitioners against the posts of Sub-Overseer, the post of Sub-Overseer was in the meantime redesignated as Sub-Engineer. However, the 3rd respondent by his memo dt. 22.3.1993 directed the 4th respondent to issue appointment orders to the petitioners who were already selected, but the 4th respondent did not take any action and kept the matter pending for more than one month. In the meantime, according to the petitioners, the in-service candidates who were diploma holders in Electrical Engineering appeared to have agitated for promotion to the post of Sub-Engineers (formerly Sub-Overseers). Thereafter the 4th respondent called for the particulars of the in-service candidates having diploma in Electrical Engineering. On 6.5.1993 the 1st respondent issued B.P.Ms.No. 58 whereby the posts of Assistant Supervisor and Sub-Overseers were integrated into one category with the new designation of Sub-Engineers. The post of Sub-Engineer was classified as category-2 in class (iii). This classification was deemed to have come into operation with effect from 1.9.1992. This BPMs No. 58 provides method of recruitment for the post of Sub-Engineer and the recruitment has to be made by direct recruitment and by appointment by transfer from the categories mentioned in the BPMs. The petitioners contended that having been selected by the duly constituted select committee, they were entitled to be appointed to the post of Sub-Engineers existing in Warangal circle. By BPMs. No. 58 the post of Sub-Engineer was made a zonal post treating the zone as a unit of appointment. However the said post had to be treated as state level post for future recruitment. In

between some more developments took place and some more orders came to be passed.

In the counter-affidavit the respondents/appellants contended that the classification of the post of Sub-Engineer was deemed to have come into operation with effect from 1.9.1992 and the Director Personnel was the appointing authority for the category of Sub-Engineer. All the appointments made by Superintending Engineer to this post from 1.9.1992 till the date of issue of B.P.Ms.No. 58, dt. 6.5.1993 were deemed to have been issued by the Director Personnel. It is also contended that after the selection was made, the Board was allotted 7 candidates as against 8 vacancies available and orders were issued in favour of 7 candidates immediately and after initiating the resultant vacancies of Sub-Engineers, the Chief Engineer had allotted 2 more candidates for whom orders were issued. It is denied that there were 11 vacancies. However it is admitted that the Chief Engineer, Electricity had allotted three petitioners as Sub-Engineers on 22.3.1993 to the circle, but the posting orders could not be issued due to instructions received in memo dt. 27.4.1993 from the Chief Engineer (Electricity) by which it was stated that the vacancies had to be filled up by service candidates by transfer before going for direct recruitment. It is also admitted that the Board had addressed a letter to the Director Personnel regarding the follow up action for recruitment to the posts of Sub-Engineer. But it is denied that there were 11 posts of Sub-Engineers. According to the counter, there were only 4 vacant posts including one for Schedule Tribe. 7 posts could not be called as vacant posts inasmuch as the 7 posts were newly sanctioned and appointment was kept in abeyance on 28.10.1988 itself. It is also admitted that by virtue of B.P.Ms. No. 58, dt. 6.5.1993 recruitment to the category of Sub-Engineer had to be made by direct recruitment and appointment by transfer from lower categories. But there is no such mention in the BPMs. or regulation that the vacancies should be filled up first by direct recruitment and thereafter by appointment by transfer. Therefore the contention of the petitioner that preference

should be given to direct recruitment was not correct. It is also admitted that the validity of merit list of selected candidates had to expire by August, 1993 and by the Board's Memo dt. 30.8.1993 it was extended by a further three months so that the interviewed candidates available in the merit list could get an opportunity of appointment. These instructions were issued not only to provide benefits to service candidates, but also to those who were in the merit list.

Now in the factual background of this case, the appellants have merely contended that by being on a merit list or select list the candidates do not get a right to appointment. It is further contended that no right would accrue to the petitioners for appointment because they were selected. These matters have elaborately been considered by the learned single Judge. Now the only question before us is whether the petitioners were in the merit list and the appellants have decided to appoint them and if the appointment has already been made, then all those judgments on which the reliance has been placed may not be relevant for the purpose of adjudication of the present controversy.

Chief Engineer Electricity, Warangal Zone, Warangal on 22.3.1993 admittedly was the appointing authority. He passed an order which is on record and it reads as under,

> "The candidates mentioned in Annexure (writ petitioners) are selected for appointment to the post of Sub-Engineer in A.P.S.E.B. Board. The Superintending Engineer, Operation, Warangal is requested to issue appointment orders to the candidates and post them against the existing vacancies.
>
> He is requested to instruct the concerned officer to satisfy himself regarding the qualifications, Age, Physical fitness, Community etc., before accepting the joining report of the candidates and intimate the date of joining of the candidates direct to Board under intimation to the office.

He is requested to intimate to employment exchange the circumstances under which he had to fill up the vacancies over and above the numbered notified earlier."

In view of this order, the appellants had accepted the panel and made appointment of the petitioners as on 22.3.1993. We have not seen anything on record that this order had ever been revoked. Therefore the judgment of the learned single Judge cannot be faulted. It is not the case of the petitioners that after their selection, they were not at all appointed. As a matter of fact, they were appointed and only the joining report was not accepted. The learned counsel for the appellants has relied on many judgments, which have been also referred to by the learned single Judge. All those judgments held that after a person is brought on select list, he does not have a right for appointment. However, the learned counsel for the appellants has laid much emphasis on a judgment reported in *Bihar State Electricity Board Vs. Suresh Prasad and others* . The law laid down in this judgment, in our view, is not going to be helpful to the appellants. In this case a panel of 22 candidates was prepared for appointment, some of the candidates did not join, therefore the candidates who were not within the 22 selected candidates claimed appointment as there were some unfilled posts. The writ petition had been allowed by the High Court and the arguments made against the judgment of the High Court were noted by the Supreme Court in para-4,

"4. Shri Pramod Swarup, learned counsel appearing on behalf of the appellant submitted that candidates in the merit list have no indefeasible right to appointment even if a vacancy exists. In this connection he placed reliance on the judgment of this Court in the case of *Shankarsan Dash* v. *Union of India*[1]. He contended that the High Court had erred in giving direction to the appellant Electricity Board to appoint Respondents 1 to 7 against 18 vacancies which remained unfilled due to candidates not turning up though they were offered appointments. He

> contended that out of 22 candidates selected for appointment pursuant to Advertisement No. 3/86 dated 15-12-1986, 18 vacancies could not be filled as the candidates did not turn up. He submitted that in the merit list Respondents 1 to 7 were at Serial No. 23 and below. That the Board had approved the panel of 22. That Respondents 1 to 7 did not figure in the panel. He submitted that in terms of the judgment of the High Court given earlier dated 23-3-1994 the appellant Board recommended names of successful candidates under Employment Notice No. 3/86 and Employment Notice No. 6/92 and consequently, on selection the Board notified the panel of 22 candidates pursuant to Advertisement No. 3/86 and 25 candidates against Advertisement No. 6/92. In the circumstances he submitted that the High Court by the impugned judgment had erred in directing the appellant Board to appoint Respondents 1 to 7 who were not in the panel. It was further contended that the judgment of the Division Bench of this Court dated 4-12-1998[*] was based on correct appreciation of facts and therefore the order of recall was not warranted."

And the Supreme Court finally held,

> "In the absence of any statutory rules to the contrary, the employer was not bound to offer the unfilled vacancies to the candidates next below the said candidates in the merit list."

There is no such controversy in the present case. The writ petitioners were selected, out of the select list already nine people were appointed and given posting orders, whereas the writ petitioners were also issued appointment orders, but their joining report was not accepted and in the meantime the impugned order came to be passed. Surprisingly even by this impugned order the appointment order of the petitioners was not cancelled. Therefore that order remained as it was. It merely stated,

> "Chief Engineers are therefore authorized to pool up the vacancies available in their jurisdiction, operate the merit list of the already interviewed candidates and issue appointment orders to the eligible candidates duly following the rule of reservation."

But what was the mischief was that the order laid down,

> "The Chief Engineers of Zones and Projects are requested to fill up the vacancies first by those employees who are working in lower categories. The balance vacancies left over after such filling up should be filled up by those candidates who are in the merit list of the candidates who were already interviewed."

Even the life of select list was extended by three months. But, on the other hand, the posts were filled up by those who were in the department. In our view, this could not have been done in terms of the rules. B.P.Ms.No. 58, dt. 6.5.1993 as it does not lay down that any preference should be given to in-service candidates. It does not lay down even a proportion for making appointment between the direct recruitment and recruitment by transfer. It merely says that the method of recruitment would be by direct recruitment and by appointment by transfer. Secondly, in our view, when the impugned order was passed, the petitioners already stood appointed and their appointment order was not recalled at any point of time. Therefore the contention of the appellants that the learned single Judge could not have ordered the appointment of the writ petitioners cannot also be taken into consideration because the appointment orders had already been issued by the appellants themselves. Therefore what is needed is to give an effect to the orders passed by the Chief Engineer by his memo dt. 22.3.1993.

With these observations, we dismiss the writ appeal. No costs.

C.C.NO. 1284 OF 2003:

The order of the learned single Judge had been stayed already in the writ appeal. Therefore we do not think there is any wilful

disobedience. The contempt case is accordingly closed. No costs.

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BNJ.

Dt.29.10.2004

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_____ PSNJ.

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.....REGISTRAR

One Fair copy to the Hon'ble Mr. Justice Bilal Nazki (for his Lordship's kind perusal)

One Fair copy to the Hon'ble Mr. Justice P.S. Narayana (for his Lordship's kind perusal)

To

1. The Secretary, the A.P. State Electricity Board, Vidyutsoudha, Khairatabad, Hyderabad.
2. The Director, Personnel A.P. State Electricity Board, Vidyuthsoudha, Khairatabad, Hyderabad.
3. The Chief Engineer, Operation Zone, A.P. State Electricity Board, Warangal.
4. The Superintending Engineer, A.P. State Electricity Board, Warangal
5. The Chairman & Managing Director, APTRANSCO (The then A.P. State Electricity Board), Vidyutsoudha, Khairatabad, Hyderabad.
6. The General Manager (P), APTRANSCO, Vidyuthsoudha, Khairatabad, Hyderabad.
7. The CMD, A.P. Northern Power Distribution Co., Ltd., OPP: NIT (Res), Petrol Pump, Warangal.
8. The Superintending Engineer (operations), A.P. Northern Power Distribution Co., Ltd., Warangal.
9. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
10. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.
11. 8 LR copies.
12. 2 CD copies.